IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Mat.Appeal.No. 387 of 2007()

AGAINST THE ORDER IN I.A. NO. 374 OF 2007 IN OP.302/2005 of FAMILY COURT,KOZHIKODE

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PETITIONER: APPELLANT/RESPONDENT

SREELATHA N.S., D/O.N.V.NARAYANAN NAIR,P
PALLIL HOUSE, P.O.PARAMBIL, KOZHIKODE.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS: RESPONDENT/PETITIONER

E.SASIKUMAR,
S/O.N.K.SREEDHARAN NAMBIAR,
IRUPPAMANNA HOUSE, KAKKOVE, P.O.VAZHAYOOR,
MALAPPURAM.

BY ADV. SRI.MANJERI SUNDERRAJ
SRI.B.PREMNATH (E)

THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 25/10/2007, ALONG WITH M.A NO. 397 OF 2007 MA NO. 452 OF 2007 MA NO. 453 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

Matrimonial Appeal Nos. 387, 397, 452, & 453 of 2007

Dated this the 25th day of October 2007

JUDGMENT

Harun-Ul-Rashid,J

Matrimonial appeal Nos. 387 and 397 of 2007 arises out of two interim orders in I.A. Nos. 374 and 375 of 2007 in O.P No. 302 of 2005 on the file of the Family Court Kozhikode. Matrimonial appeal Nos. 452 and 453 of 2007 arises out of two interim orders in I.A. Nos.347 and 348 of 2007 in O.P No.282 of 2005 on the file of the same court. O.P No. 302 of 2005 was filed by the respondent herein for restitution of conjugal rights . O.P No. 282 of 2005 was filed by the appellant herein for realisation of gold ornaments. When those Original petitions were posted for trial there was no representation from the side of the appellant on the respective dates. Therefore O.P 302 of 2005 was allowed and an ex-parte decree was passed and O.P 282 of 2005 was dismissed.

2. I.A. Nos. 374 and 375 of 2007 were filed in O.P 302 of 2005 for setting aside the exparte order and for condoning the delay in filing the said application. I.A. Nos. 347 and 348 of 2007 were filed in O.P 282 of 2007 for setting aside the dismissal of the Original petition and for condonation of delay in filing the said application. In the four I.As which were filed in both cases, impugned orders were passed by the Family

court allowing the Original petitions on condition that the appellant shall pay a cost of Rs. 500/-each to the respondent on or before the next hearing date; failing which the Original petitions will stand dismissed. The order of payment of cost is not complied with. As a consequence the Original petitions were dismissed by the impugned orders passed by the said court. The impugned orders are under challenge in these four Matrimonial appeals.

3. We find that the reasons stated for the condonation of delay was accepted by the Family Court and the only reason for the subsequent dismissal is the failure of the payment of cost from the side of the appellant. Before this Court the appellant submitted that she is ready to pay the costs as ordered by the Family court and further requested to direct the Family court to restore the four applications back to file. In the interests of justice we allow I.A Nos 374 and 375 of 2007 in O.P No. 302 of 2005 and I.A. Nos. 347 and 348 of 2007 in O.P No. 282 of 2005 on condition that the appellant shall pay the cost at the rate of Rs.500/- each to the respondent in the four appeals also within a period of two weeks from today.

4. In the result ,we dispose of these Matrimonial appeals

allowing I.A. Nos. 374 & 375 of 2007 in O.P No. 302 of 2005 and I.A Nos. 347 & 348 of 2007 in O.P No. 282 of 2005 on condition that the appellant shall pay a cost at the rate of Rs. 500/- each to the respondent in the four appeals . The said amount shall be paid by the appellant to the counsel for the respondent within the time limit as stated above.

5. The Family court is directed to hear and dispose of the cases as early as possible at any rate within 4 months from the date of appearance of the parties. The parties shall appear before the Family court on 30-11-2007.

KURIAN JOSEPH, JUDGE

HARUN-UL-RASHID, JUDGE

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